

REMARKS

The Office Action Summary correctly indicates that claims 1-10 are pending in the application. It also indicates that claims 1-10 are rejected. Nonetheless, the Office Action Summary does not indicate whether the drawings filed with the application are accepted by the USPTO. Applicant respectfully requests an indication from the examiner that the drawings are acceptable. Or in the alternative, applicant requests an indication as to any particular objections that may exist with respect to the current drawings, so that applicant will have a reasonable opportunity to address any such rejections.

Applicant also notes that the Office Action Summary does not acknowledge the claim for foreign priority under Section 119. Applicant respectfully requests that the next Office Action clearly include such an acknowledgement.

Substantively, claims 1-2 and 4-10 were rejected for alleged lack of novelty, under Section 102(e) based on Fauret U.S. Patent No. 7,337,623 (“Fauret ‘623”). Claim 3 was rejected for alleged obviousness, under Section 103, based on a combination of Fauret ‘623 and Fischer U.S. Patent No. 5,545,084 (“Fischer ‘084”). Applicant respectfully traverses the rejections.

These rejections are improper and should be withdrawn. Fauret ‘623 is not properly citable as a prior art reference under Section 102(e). A copy of the first page of Fauret ‘623 is attached to this response.

Fauret ‘623 became citable as a prior art reference under Section 102(e) as of its filing date, which was December 23, 2004. Although Fauret ‘623 claims priority to a German application filed on December 29, 2003, that previously filed German application is not an appropriate Section 102(e) date for the later filed application which eventually became Fauret ‘623. The German priority application of Fauret ‘623 is not an “application . . . filed in the United States. . .” under Section 102(e).

The present application claims priority to a German priority application filed on December 30, 2003, via intervening PCT Application No. PCT/EP2004/014854 which was filed on December 30, 2004, and designated the United States. Thus, applicant's priority date, namely December 30, 2003, is earlier than the Section 102(e) date of Fauret '623, which is December 23, 2004. Therefore, Fauret '623 is not citable as a prior art reference against the claims of this application, under Section 102(e). Accordingly, the substantive rejections which depend upon Fauret '623 being a Section 102(e) reference must be withdrawn.

Without the Fauret '623 available as a citable reference, none of the substantive prior art rejections remains viable.

Accordingly, applicants respectfully request that the Office Action be withdrawn, and that a new Office Action be issued which indicates that: 1) the drawings filed with the original application are acceptable; 2) applicant's claim for foreign priority under Section 119 is acknowledged; and 3) Fauret '623 is not properly citable as a reference under Section 102(e), and therefore the previously stated substantively rejections are withdrawn. Moreover, presuming the examiner conducted a thorough prior art search prior to the Office Action, it follows that the remaining claims 1-4 patentably define over the prior art, and that these claims are allowable. For these reasons, applicant respectfully requests an allowance of the claims at the earliest possible date.

It is believed that no fee is due for this filing. If any fee is deemed due, consider this as an authorization to charge Deposit Account 23-3000 therefore.

Respectfully submitted,
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